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E.O. 12958: N/A
TAGS: KIPR ECON ETRD CH
SUBJECT: Fighting Copyright Infringement at the Canton Fair

REF: A) Guangzhou 29654

(U) This document is sensitive but unclassified. Please protect accordingly.

¶1. (SBU) Summary and Comment: Representatives from U.S. and Canadian art publishing companies spotted numerous vendors selling copies of their products at both the Canton Fair and the Jinhan Fair in Guangzhou on October 25, 2006. Officials at the Canton Fair IPR complaint center, after first insisting on frustratingly high evidentiary requirements, eventually ordered vendors to remove infringing products from their displays. Organizers from the Jinhan Fair were more cooperative, accompanying the group throughout the fair and ordering vendors to remove violating items. Neither fair, however, imposes penalties that effectively deter piracy, and the rights-holders expressed doubts that their policing efforts and expenses are worth the cost. The companies blame China's vast market of pirated goods for their current financial woes. End Summary and Comment.

Background on the Art Publishing Industry and IPR Infringement

¶2. (SBU) Econoff accompanied the owners of Art in Motion and Wild Apple to the China Export Commodities Fair (Canton Fair) and Jinhan Artwork and Craft Fair (Jinhan Fair) on October 25, 2006. Both companies are members of the Art Copyright Coalition, an association of 18 art publishing companies from the United States, Canada, and Europe. The companies range in size from USD 2 to 50 million in sales per year.

¶3. (SBU) According to the company owners, the legitimate art publishing industry has seen sales and employment figures fall significantly during the past few years, in large part due to rampant copyright infringement in China. Sales for Art in Motion, based in Vancouver, have fallen 40 percent during the last few years, and the company has trimmed staff from 600 to 300. Wild Apple, which is based in Vermont, has seen a similar trend. Neither company sells its products in China because of concerns about counterfeiting.

¶4. (SBU) The Canton and Jinhan Fairs are a source of a significant portion of the world's counterfeit art prints, according to company owners. Art in Motion calculated that vendors at the Canton and Jinhan fairs earn between USD 500 million and USD 1 billion in

annual sales - more than the legitimate art publishing industry. Company representatives have even seen fakes in large U.S. retail chains such as Wal-Mart and Target. The counterfeiters generally buy legitimate prints and copy them with high-quality scanners.

The Costs of Investigating in China

¶ 15. (SBU) For most members of the Art Copyright Coalition, hiring legal representation to investigate infringement in China is prohibitively expensive. Art in Motion's operational and legal fees will reach USD 40,000 for this session of the Canton Fair. Wild Apple did not hire a law firm because the costs were too high. Several years ago, Art in Motion hired an investigator to track down an infringing manufacturer, conduct a joint raid with Chinese authorities, and pursue civil action. Expenses topped USD 100,000 and the operation did not achieve any lasting significance, according to Garry Peters, owner of Art in Motion. He said his company may ultimately decide that it cannot afford to continue funding investigation or enforcement actions in China.

Canton Fair: Burdensome Documentation Requirements

¶ 16. (SBU) During the spring 2006 session of the Canton fair, the fair's IPR complaint center did not accept Art in Motion's documentation showing copyright ownership. To prepare for the fall session, the company selected 120 of the most commonly counterfeited images and, following Canton Fair requirements, obtained the following documents for each: copyright registration, notarized copyright owner authorization, legalized copyright owner authorization (by a Chinese Consulate in the United States), power of attorney for the legal representative, and Chinese translations. The documents filled a small suitcase. Leon Wang, lawyer for Baker

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& McKenzie, which was representing Art in Motion, said the complaint office's documentation requirements are overly burdensome and more stringent than required by Chinese law.

Infringement at the Canton Fair

¶ 17. (SBU) The group located nine vendors at the Canton Fair selling artwork that infringed on their copyrights, up from eight vendors in the spring session. These numbers only include vendors that had at least four infringing items on display. Some of the vendors had catalogues that included hundreds of Art in Motion and Wild Apple images. The company owners said that, generally speaking, every vendor with art prints at the fair was selling works that infringed on a copyright.

Canton Fair IPR Complaint Center: Inconsistent But Cooperative

¶ 18. (SBU) The Canton Fair's IPR complaint center consisted of two small offices, one for copyrights and the other for trademarks and patents. The copyright office, which was noticeably less busy than the trademark/patent office, included six desks staffed by officials from the Trade Fair, the Guangdong Copyright Bureau, and the Guangdong Administration for Industry and Commerce. English instructions describing the complaint process were posted outside the offices. The offices did not, however, have English versions of the complaint submission forms. (Note: The Consulate and Embassy have in the past asked Canton Fair organizers to make translated documents available. End Note.)

¶ 19. (SBU) The complaint office staff accepted Art in Motion's copyright ownership documents. However, they raised a new hurdle that potentially stalled further action by insisting on photographs showing the displayed counterfeit goods. In addition, they would not accept as evidence vendors' catalogues with infringing images. However, the following morning, when the group returned to the complaint office, officials dropped the photographic requirement. The officials visited the exhibition halls and ordered the vendors to remove infringing products. In two cases, they detained vendors

for further questioning.

¶10. (SBU) Despite the eventual cooperation by Canton Fair officials, company owners expressed frustration at the lack of deterrent penalties. In all nine cases, the vendors continued to operate for the duration of the fair. Infringers are only banned from the fair after three cases of infringement. In addition, according to Wang, enforcement decisions made by the complaint office are not applicable in separate administrative or legal cases.

Canton Fair IPR Statistics

¶11. (SBU) This session of the Canton Fair, which ended October 30, saw 573 complaints of IPR violations and 509 enterprises penalized, according to press reports. These figures are up 21.4 per cent and 21.5 percent, respectively, compared with the spring 2006 session. Canton Fair officials permanently banned three exhibitors from the fair. More than 190,000 visitors attended the fair, signing contracts worth USD 34.06 billion.

The Jinhan Fair: Better But Still Discouraging

¶12. (SBU) The Jinhan Fair was adjacent to the Canton Fair and had a comparable volume of art prints for sale. Jinhan organizers required only basic proof of copyright ownership (e.g., legal proof of the company and catalogues) and were willing to accompany the group on a walk-through of all 10 floors of the fair building. The group located 10 vendors selling art that infringed on their copyrights, down from 15 vendors in the spring 2006 session. The company owners noted that the overall amount of artwork on display was less than the prior session. Almost all of the companies selling prints were from Fujian's Minghou County, which is located near Fuzhou. Wang noted that Minghou is a center of legitimate and illegitimate art printing in China, much as Fujian's Putian is for shoe manufacturing.

¶13. (SBU) Jinhan Fair organizers ordered the vendors to remove the

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infringing items from their booths and from their catalogues. Wang returned to the booths two days later and found that one of the 10 vendors had placed the items back on display. Despite the cooperation of Jinhan Fair organizers, the company owners were wary of their commitment to policing the vendors. Indeed, during the walk-through, one of the fair organizers was overheard warning someone on her cell phone to "be careful" because the group was on its way.

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